

8.0 Wetland Management

8.1 Issue Statements

The member cities (except Medicine Lake, Robbinsdale, and St. Louis Park) are the local government units (LGU) responsible for administering the WCA. The BCWMC is the LGU for the WCA in the cities of Medicine Lake, Robbinsdale, and St. Louis Park. As a result, the BCWMC has not played a major role in wetland management. The member cities vary in their level of wetland management (e.g., wetland inventories, classifications, ordinances, buffers). Table 8-1 summarizes each city's wetland management controls. Some cities are requiring buffers adjacent to wetlands for new developments. Buffers maintained with natural vegetation reduce impacts of adjacent development on water quality and minimize waterfowl access to water bodies.

Figure 6 shows the wetlands from the National Wetlands Inventory that are located within the BCWMC. There may be additional wetlands smaller than approximately 0.5 acre in the watershed that are not shown on the map.

8.2 Goals and Policies

8.2.1. Wetland Management Goals

Achieve no net loss of wetlands in the BCWMC, in conformance with the Minnesota Wetland Conservation Act and associated rules (Minnesota Rules 8420).

8.2.2. Wetland Management Policies

- A. The BCWMC will encourage member cities to complete wetland inventories and assess wetland functions and values.
- B. The BCWMC will encourage member cities to develop wetland protection ordinances.
- C. The BCWMC adopts the Minnesota Rapid Assessment Method (MnRAM) as the wetland assessment method and the wetland management classification system for the member cities to utilize when assessing and classifying wetlands located within their cities. If member cities have already performed wetland assessments, they are not required to perform reassessments

using the MnRAM. However, if wetland reassessment is necessary, the cities are encouraged to use the MnRAM in their re-evaluation process. The BCWMC will consider developing a different wetland management classification system for use by member cities, if requested by the member cities.

- D. The BCWMC requires that a buffer policy adjacent to water resources (including wetlands) be included in the member cities' revised local stormwater management plans.
- E. The member cities are required to manage wetlands in accordance with the WCA. The BCWMC will assist the member cities with managing wetlands in accordance with the WCA, as requested.
- F. The BCWMC will serve as the LGU responsible for administering the WCA for member cities, as requested (currently Medicine Lake, Robbinsdale, and St. Louis Park).
- G. The BCWMC will review local watershed management plans for compliance with this Plan's goals and policies regarding wetland management.

8.3 Background

In addition to the forested areas, numerous wetlands were once present in the central and eastern portions of the watershed, but the majority have been drained or filled for development. Remaining wetland areas are concentrated in the western part of the watershed and some are the remnants of approximately 1,500 acres of marsh, which once existed between Medicine Lake and Minneapolis.

There are federal, state, regional, and local regulations pertaining to wetland management. Federal regulatory programs include the following:

- **Section 10 of the Rivers and Harbors Act**—The COE is the responsible agency for this program, which regulates the placement of structures and/or work in, or affecting, navigable waters of the United States.
- **Section 404 of the Clean Water Act**—The COE has primary responsibility for administering the program but the EPA can appeal to a higher COE authority or veto a COE decision. This program regulates the discharge of dredged or fill material into and, in some cases, excavation in waters of the United States, which includes some wetlands (i.e., interstate wetlands, wetlands hydrologically connected to interstate waters, but not isolated wetlands). There are basically two types of

Section 404 permits in Minnesota: (1) General Permits/Letters of Permission and (2) individual permits.

- **Section 401 of the Clean Water Act**—The EPA delegated responsibility for this program to the MPCA. Activities which require a Section 10 permit, Section 404 individual permit, or Federal Energy Regulatory Commission permit must first obtain Section 401 water quality certification or waiver from the MPCA stating that the activity conforms to state water quality standards.
- **Food Security Act of 1985, “Swampbuster”**—The U.S. Department of Agriculture, through the Farm Service Agency and the Natural Resources Conservation Service, handles administrative and technical requirements. The program regulates the alteration of wetlands for agricultural use and prohibits farmers who receive federal subsidies from draining wetlands. Alteration of a wetland results in ineligibility for all government price and income support programs. The COE is responsible for issuing permits for activities that result in the discharge of dredged or fill material into waters of the U.S., irrespective of federal farm program participation.

State regulatory programs include the following:

- **Public Waters Work Permit program, Minnesota Statutes 103G**—The DNR is the responsible agency for administering this program.

The Public Waters Work Permit program was amended in 2000 to minimize overlapping jurisdiction with the WCA. The DNR jurisdiction over some activities that would change the course, current or cross section of a Public Water Wetland (those designated with a W), is automatically waived to the LGU for administering the WCA. For other activities, the DNR has the discretion to waive permit jurisdiction to the LGU. For projects in which the DNR waives jurisdiction or projects adjacent to a Public Water or Public Water Wetland, a DNR representative has been added to the Technical Evaluation Panel (TEP). For projects with DNR jurisdiction, an individual DNR permit is required using DNR rules and WCA sequencing and replacement rules. The DNR has retained jurisdiction over all Public Waters (those designated with a P). The BCWMC member cities cooperate with this program by referring project proposers to the DNR and the LGU. Figure 6 shows the DNR Public Waters Inventory (PWI).

The legislative amendments passed in 2000 also allow the DNR to reclassify public water wetlands. The changes establish a case-by-case process to allow the DNR to initiate changes to the PWI, which include:

- Changing Public Water Wetlands to Public Waters if the wetlands are subject to shoreland zoning or are lacustrine wetlands, or
- Taking Public Water Wetlands out of DNR jurisdiction and putting them under WCA jurisdiction.

The DNR must obtain approval of all LGUs for the changes to become effective. No formal sorting process has been initiated by DNR for reclassifying all Public Water Wetlands.

- **Wetland Conservation Act of 1991, Minnesota Rules Chapter 8420 (WCA)**—LGUs are responsible for administering the rules. The intent of the WCA is to achieve no net loss of wetlands. The WCA rules regulate draining and filling activities in all wetlands not under the jurisdiction of the DNR, excavation in permanently or semi-permanently flooded portions of Type 3, 4, and 5 wetlands, and, when delegated, some activities in DNR Public Water Wetlands. The WCA rules (Minnesota Rules 8420) require that drained and filled wetlands be replaced at a minimum replacement ratio of 2:1 in non-agricultural areas. Local units of government may have stricter wetland regulations. The WCA allows for the preparation of wetland management plans by LGUs that may give them more flexibility through a regional wetland analysis. These plans need to go through a public review process and become effective upon adoption by the local government unit if the BWSR board does not disapprove it. The DNR is involved in enforcement of the WCA and is responsible for identification, protection, and management of calcareous fens.

The Minnesota Legislature has significantly amended the WCA four times. The most recent amendments were made in 2000, with the permanent rule changes effective July 31, 2002. Following is a summary of the significant changes:

1. **Non-wetland Definition.** The definition of non-wetland was added to the rule, which defines both upland areas and deep water habitats as non-wetland. Deepwater habitats are defined as generally being deeper than 6.6 feet or the limit of emergent vegetation. Excavation in all wetland types that results in a conversion to non-wetland is regulated.
2. **De minimis Exemption.** The rules clarifies that the exempt area (2,000 square feet in areas not located within shoreland wetland protection zones) for Type 1, 2, 6, and 7 wetlands does not apply when the area fringes a Type 3, 4, or 5 wetland. The rules also clarify that wetlands are classified by the type with the deepest water within the wetland.

3. **Stormwater Pond Maintenance.** A no-loss provision was added to the rule for excavating and removing deposited sediment in constructed stormwater management basins, “wetlands presently utilized as stormwater management basins,” or excavating contaminated substrate as long as the excavated area is stabilized to prevent water quality degradation and the excavation is limited to the minimum dimensions necessary to achieve the desired purpose.
4. **Appeal Period.** The appeal period was extended from 15 to 30 days from the date of the decision.
5. **Wetland Preservation Areas.** The rules now allow watershed districts to offer the wetland preservation program, in addition to counties.
6. **Actions Eligible for Wetland Replacement Credit.** Restoration of partially drained wetlands is eligible for new wetland credit, in an amount not to exceed 25 percent of the restored wetland area, or public value credit, in an amount not to exceed 50 percent of the restored wetland area. The LGU, with concurrence from the TEP can allow credit for restoring exceptional natural resource values of wetlands based on a functional assessment. Upland buffer areas must have an average width of at least 25 feet in municipal areas, be adjacent and contiguous to replacement wetlands, and have a plan to maintain or establish native, non-invasive vegetation approved by the TEP. Water quality ponds constructed to treat stormwater runoff prior to discharging into wetlands can receive public value credits for up to 100 percent of the normal pool area and modeling of phosphorus removal is no longer required.
7. **Wetland Replacement.** Created replacement wetlands must have at least half the slopes within the wetland no steeper than 10:1. The LGU must secure and hold a performance bond or surety until it is determined that the design goal of the wetland replacement is fully achieved.
8. **Local Comprehensive Wetland Protection and Management Plans.** The new rules provide more flexibility for protecting high value wetlands and allow for prescribing standards for size and location of replacement wetlands, by establishing type requirements, size/ratio requirements, functional quality requirements, location requirements, and wetland mitigation fee in lieu of direct replacement criteria.

9. **Wetland Banking.** The rules now allow transfers of wetland credits for later use without transferring real property. The wetland bank account holder is now responsible for reporting the sale of credits. Wetland bank areas must be marked in the field with visible monuments.

As part of administering the WCA rules, the designated LGUs are responsible for making determinations on the accuracy of wetland delineations, wetland functions and values assessments, and wetland replacement plans, often with review and input by the TEP. The member cities (except Medicine Lake, Robbinsdale, and St. Louis Park) are the LGUs responsible for administering the WCA within the BCWMC. For all projects proposing to impact more than 10,000 square feet of wetland, the LGU must send a copy of the application to the TEP, DNR and the BCWMC, and invite the agencies to submit comments.

Other state rules include:

- **State Water Quality Standards, Minnesota Rules 7050**—The MPCA is the responsible agency. The rules include water use classifications and water quality standards for wetlands that are narrative rather than numerical. The rules include a mitigative process to protect wetlands from significant adverse impacts and to maintain nondegradation of wetland designated uses.

Although not prohibited, the MPCA discourages the use of wetlands for stormwater treatment.

The Metropolitan Council encourages older cities to focus on redevelopment issues and public education regarding wetland protection and the importance of vegetative buffers.

In addition to the cities, potential permittees should also contact the COE, the DNR, and the MPCA for wetland permit information.

Table 8-1. City Wetland Management Controls

| City | Wetland Inventory | Management Classification | Ordinances | Setback | Buffer | LGU | Natural Resources Inventory |
|----------------|--|---------------------------|---|---|---|---------------|-----------------------------|
| Crystal | No (use National Wetland Inventory) | No | No | No | No | Crystal | No |
| Golden Valley | Yes | No | No [but draft ordinance in city plan] | No | No | Golden Valley | Proposed for 2002 |
| Medicine Lake | No | No | No | No | No | BCWMC | No |
| Minneapolis | No | No | Yes, Ordinance 535.300 pertains to wetland conservation | | | Minneapolis | |
| Minnetonka | Field verified | Manages Types 2-9 | Yes, Ordinance 300.23 | 35' for structures & 20' for parking or driveways | Yes, minimum width varies according to class: 50' – Preserve 25' – Manage 1 16.5' – Manage 2 | Minnetonka | |
| New Hope | Yes, in Surface Water Management Plan | Yes | No | No | No | New Hope | No |
| Plymouth | Field verified | 4 categories | Yes, Ordinance 21670 | 15' from buffer | Yes, varies according to class | Plymouth | |
| Robbinsdale | No | No | No | No | No | BCWMC | No |
| St. Louis Park | Yes, field verified, not delineated (11/28/00 Wetland Mgmt Plan) | 2 categories | Pending | | 20' – Manage 1 10' – Manage 2 (encouraged) | BCWMC | |